

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: GOOGLE DIGITAL ADVERTISING
ANTITRUST LITIGATION**

MDL No. 3010

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: The action listed on Schedule A (*Klein*) encompasses two consolidated class action complaints against defendant Meta Platforms, Inc., f/k/a Facebook, Inc. (“Facebook”) concerning Facebook’s alleged monopolization of certain markets – one on behalf of Facebook advertisers concerning the Social Advertising Market (the “*Klein Advertiser Action*”) and the other on behalf of Facebook users concerning the Social Network and Social Media Market (the “*Klein Consumer Action*”). The *Klein Advertiser Action* asserts three federal antitrust claims involving, among other things, an alleged anticompetitive agreement between Google and Facebook concerning their online advertising practices, which overlaps with the claims regarding the Google-Facebook agreement in the MDL.¹ The *Klein Consumer Action* does not involve claims that overlap with the MDL. On March 21, 2022, a conditional transfer order (“CTO”) issued providing for transfer of *Klein* under Section 1407(a) with simultaneous separation and remand of the *Klein Consumer Action*. The CTO, if finalized, thus would effectuate the transfer of all three claims in the *Klein Advertiser Action* to the Southern District of New York for inclusion in MDL No. 3010.

Pursuant to Panel Rule 7.1, plaintiffs in the *Klein Advertiser Action* and the advertiser plaintiffs in MDL No. 3010, respectively, filed motions to vacate the CTO. In the alternative, the *Klein Advertisers* ask the Panel to separate and remand their monopolization claims against Facebook (Counts I and II), thus limiting transfer solely to their Section 1 claim asserting unlawful agreement in restraint of trade (Count III). Defendant Facebook opposes the motions to vacate and supports transfer of the *Klein Advertiser Action* in its entirety. In the alternative, Facebook requests that the Panel transfer, at minimum, Count III. Google, the common defendant in the MDL, did not file a response to the motions, but previously submitted a notice stating that it supports transfer of Count III, and takes no position on transfer of Counts I and II.

After considering the argument of counsel, we find that transfer of this action will not promote the just and efficient conduct of this litigation. In the order establishing MDL No. 3010,

¹ Counts I and II of the *Klein Advertiser Action* assert claims for monopolization and attempted monopolization of the Social Advertising Market in violation of Section 2 of the Sherman Act. Count III asserts a claim for unlawful agreement in restraint of trade in violation of Section 1. Facebook is the sole defendant for all claims.

we explained that “[t]he actions concern Google’s alleged monopolization and suppression of competition in online display advertising – essentially, the marketplace for the placement of digital display ads on websites and mobile apps,” and held that centralization was warranted based on the common factual core concerning “the allegation that Google has monopolized or suppressed competition in online display advertising services in violation of federal antitrust law” *See In re Digital Advertising Antitrust Litig.*, 555 F. Supp. 3d 1372, 1375 (J.P.M.L. 2021). We described several common factual questions among the actions, including, *inter alia*, questions involving an alleged anticompetitive agreement between Google and Facebook to suppress “the alleged ‘header bidding’ threat to Google’s market position.”² *See id.* The *Klein* Advertiser Action undoubtedly raises factual questions concerning the Google-Facebook agreement that overlap with the Google-Facebook agreement questions in the MDL. However, the non-common issues far exceed the common issues. In particular, the principal allegations in the *Klein* Advertiser Action concern Facebook’s alleged monopolization of the Social Advertising Market – a claim that involves years of alleged conduct that is uniquely about Facebook – and is not an issue in the MDL. We believe that expanding MDL No. 3010 in this manner would undermine the efficient conduct of the pretrial proceedings currently underway.

We deny Facebook’s request, in the alternative, to separate Count III from the rest of the *Klein* Advertiser Action, for inclusion in the MDL. The Google-Facebook agreement is at issue in all three counts of the *Klein* Advertiser Action, not just Count III. Thus, splitting up the claims in this manner would produce few, if any efficiencies. In our judgment, efficiencies will be maximized by allowing the Northern District of California court to preside over all three claims in the *Klein* Advertiser Action, and continue its ongoing coordination of discovery and pretrial motions with the *Klein* Consumer Action.³

In these circumstances, informal cooperation among counsel and coordination among the involved courts are, in our judgment, preferable to transfer. We note that plaintiffs’ counsel in the *Klein* Advertiser Action is one of the co-lead counsel in MDL No. 3010, and thus is well-situated to voluntarily coordinate any overlapping pretrial proceedings concerning the Google-Facebook agreement. Defendant Facebook, which is a defendant in 27 of the 30 actions in the MDL, also is well-situated to maximize efficiencies from informal coordination.

IT IS THEREFORE ORDERED that the Panel’s conditional transfer order designated as CTO-7 is vacated.

² “Header bidding allegedly involves code that publishers insert into the header section of their webpages that allows them to obtain bids from non-Google exchanges.” *See In re Digital Advertising Antitrust Litig.*, 555 F. Supp. 3d. at 1375 n.5.

³ The *Klein* Advertiser and Consumer Actions have been consolidated for over a year, and during this time, the parties have engaged in significant coordinated discovery and motions practice.

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PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Karen K. Caldwell", is positioned above a horizontal line. The signature is written in a cursive style.

Karen K. Caldwell

Chair

Nathaniel M. Gorton

David C. Norton

Dale A. Kimball

Matthew F. Kennelly

Roger T. Benitez

Madeline Cox Arleo

**IN RE: GOOGLE DIGITAL ADVERTISING
ANTITRUST LITIGATION**

MDL No. 3010

SCHEDULE A

Northern District of California

KLEIN, ET AL. v. META PLATFORMS, INC., C.A. No. 3:20-08570